

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KENNETH GUILMETTE,)	
Plaintiff)	
)	Civil Action No.
V.)	
)	
BRIAN O'NEILL and ROBERT)	
C. LABARGE, JR.)	
Defendants,)	
)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants O'Neill and Labarge give Notice of Removal to this Court of an action brought against them in the Massachusetts Superior Court for Essex County. In support thereof, Defendants state the following:

1. Removing parties are Defendants in the above-entitled action.
2. On or about July 7, 2009, the Plaintiff commenced this action in the Essex County Superior Court of the Commonwealth of Massachusetts. An amended complaint was filed on July 28, 2009. A copy of the Amended Complaint of Civil Action No. 09-01261-C is attached as Exhibit A.
3. Service on Defendants was made less than thirty days prior to this notice of removal.
4. No responsive pleadings have been filed in state court by the Defendants.

5. The above-entitled action is a civil rights action for damages and alleges violation of 42 U.S.C. §1983.
6. This Court has original jurisdiction in the above-entitled action pursuant to 28 U.S.C. § 1331, and the action may therefore be removed to this Court pursuant to 28 U.S.C. § 1441.
7. Defendant Commonwealth of Massachusetts, Massachusetts Department of State Police, is not subject to the jurisdiction of this Court for the claims asserted in the complaint by virtue of the Eleventh Amendment to the United States Constitution. See Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 121 (1984). For this reason it is not necessary to obtain the consent of the Commonwealth in this Notice of Removal, nor has the Commonwealth given its consent to removal. Hill v. City of Boston, 706 F.Supp. 966, 068 (1989). The claims against the Commonwealth are not being removed.
8. Notice of Removal will be given to all counsel promptly after filing this notice, and true and accurate copy of this notice will be filed with the clerk of the Superior Court for Essex County, Massachusetts.
9. Pursuant to Local Rule 81.1, certified or attested copies of all records, proceedings, and docket entries in the state court will be filed in this Court within 30 days.

WHEREFORE, Defendants O'Neill and Labarge give notice of the removal of all claims against them from the Superior Court for Essex County, Massachusetts to this Court.

Respectfully submitted,

Defendant Brian O'Neill
By His Attorney,

____ /s/ Brian Rogal _____
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Defendant Robert C. Labarge, Jr.
By His Attorney,

____ /s/ Joseph Kittredge _____
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CERTIFICATE OF SERVICE

I hereby certify that service has been made on each counsel of record in hand.

August 7, 2009

____ /s/ Brian Rogal _____